

surprising, given the fact that he is claiming to describe documents he has seen which represent observations of unnamed people in Denver going back three years prior to his 1992 letter). However, U S WEST has very specific procedures in place which govern when and how business office personnel may market voice messaging services. These procedures include the “unhooking” prohibition described above, plus specific methods of dealing with call forwarded services, customers with restricted CPNI and customers with an unlisted or non-published number. These procedures implement the FCC’s rules and U S WEST personnel comply with them.

In a similar (although more general) vein, MCI fulminates as follows:

Using a variety of strategies, they [the RBOCs as a group] have leveraged their remaining monopoly power to extort whatever advantage they can secure in emerging adjacent competitive markets, including the enhanced services market. The blithe suggestion in the Notice that BOC nondiscrimination reports have shown that discrimination has not occurred therefore cannot be taken seriously.⁴⁵

While the MCI rhetoric quoted above is drivel, it occurred to U S WEST that the Commission may not be aware of the effort which goes into completion and filing of these nondiscrimination reports.

U S WEST’s Parity Compliance Reports are issued monthly and quarterly, and compare Affiliate customer results with All Other customer results. There are a total of 121 specific categories governing products for CPE, ONA and EIC (expanded interconnection) service offerings. Raw data for the reports is extracted from the

⁴⁵ MCI Comments at 38 (citation omitted).

SOPAD, CORD and SOLAR service order data bases. The data extracts are processed in the CPR database by a FOCUS processor which compiles the data based on provisioning input. This information, on a state-by-state level, is used for internal analysis and preparation of the required CPE and enhanced service reports to the Commission. Maintenance reports require initial extracts of completed maintenance reports from the WFA and TIRKS system. The Maintenance analysis extracts require details of completed maintenance reports obtained from WFA, TIRKS, and LMOS. A (variable) threshold is set based on the differential found between Affiliate results and All Others results. The threshold can be set to include all reports exceeding X hours of report duration (from time of initial report to final completion status in the maintenance system). This information is applied to the research of reasons for standards not met including: parity concerns, excessive intervals per state/region/company, and other inconsistent (maintenance) legal results. Standards for maintenance compliance include: an allowable differential of 42 minutes for CPE results; a 1 hour differential for ONA designed services results; and a 2 hour differential for non-designed services results. Root cause data research requires data obtained from : WFA; LMOS; WFA-DO; TIRKS; compilation systems (FOCUS, OQS, MTAS); and networking systems (RDS, RMDS). In some cases, local trouble history record pattern information, that is pertinent to a given area's results, is obtained via either the ACE or CRAS systems. Data obtained from EASY is used for local pattern identification for LMOS processed services.

In other words, preparation and analysis of the U S WEST nondiscrimination reports are complex processes designed to keep both U S WEST and the Commission appraised of the success of U S WEST in achieving its commitment to provide nondiscriminatory provision of basic services. MCI's blithe dismissal of this rigorous process is wrong.

In short, CompuServe's and MCI's allegations of discrimination and misconduct are so flimsy that they demonstrate exactly the contrary of what CompuServe and MCI contend. If U S WEST were really behaving in a manner to thwart competition in the enhanced services markets in which it participates, CompuServe and MCI would certainly have been able to come up at least with some compelling evidence to this effect. The absence of any pertinent evidence whatsoever is, we submit, powerful evidence that CompuServe and MCI have been unable to uncover any meaningful misconduct on the part of U S WEST. Given the intense attention that U S WEST has given to ONA compliance, this fact is hardly surprising, but it is compelling nevertheless.

IV. MCI'S ATTACKS ON THE STANDARDS SETTING PROCESSES ARE MISPLACED

MCI, as part of an apparent effort to demonstrate that the non-structural safeguards which form the basis of U S WEST's ONA compliance procedures cannot work, contends that the Information Industry Liaison Committee ("IILC") "is essentially a black hole from which nothing ever emerges, or, if something does emerge, only years late and in a form that does not satisfy the competitive needs

that necessitated the request to the IILC in the first place.”⁴⁶ MCI concludes that “any Commission policy decision that relies in part on the availability of the IILC to resolve requests by competitive service providers for BOC network features is inherently arbitrary. Thus, any decision based partly on the ONA process, which relies on the IILC, will be arbitrary.”⁴⁷ In support of this rather striking accusation against an organization comprised of representatives of the entire telecommunications industry, including MCI itself (which exercises a powerful leadership role in industry standards organizations), MCI relies entirely on an affidavit of a gentleman named Peter P. Guggina, who represents MCI as a member of the board of directors of the Alliance for Telecommunications Industry Solutions (“ATIS”).

Mr. Guggina’s affidavit, however, rather than showing any actual disfunctionality with the IILC or other entities involved in the standards setting process, demonstrates a strange personal paranoia which finds an RBOC conspiracy behind every disagreement with MCI or Mr. Guggina himself on practically any issue. For example, in the section of his affidavit claiming that “The RBOCs and Bellcore Can Control Enhanced Services Development Through Dominance of the Industry Standards and Forum Process,”⁴⁸ Mr. Guggina attributes all IILC delays in resolving difficult issues to RBOC intransigence, and waxes furiously over the

⁴⁶ Id. at 31.

⁴⁷ Id. at 31-32.

⁴⁸ Guggina Affidavit at 4-9 (appended to MCI Comments as Exhibit B).

injustice caused by the fact that a consultative process providing due process might actually require compromises from the participating parties:

Issues originated by ESPs and presented to the forum are frequently altered by RBOC participants. Hence, the scope and intent of the issues are changed in order to gain RBOC support in working the issue.⁴⁹

This, of course, is precisely the nature of compromise. U S WEST must likewise be flexible in these types of bodies in order to achieve the same type of consensus to pursue its own interests. Mr. Guggina's suggestion that the industry consensus process be replaced by government edict -- a common theme throughout his affidavit⁵⁰ -- is seriously defective.

One is tempted to provide a point-by-point rebuttal to Mr. Guggina's affidavit, for it is in reality an attack on one of the most fundamental propositions in the American economy -- that companies and individuals doing business together will arrive at a superior result than would have been the case if the government dictated the relevant business outcomes. However, stripped of innuendo and adjective, Mr. Guggina's entire affidavit actually does nothing more than document that the standards process is a difficult one, and that all parties involved (including MCI) are taking the process seriously. Assertions that LECs and interexchange carriers sometimes have difficulties in resolving issues (pp. 10-13), that some

⁴⁹ Id. at 6 (footnote omitted).

⁵⁰ Id. at 8-9.

RBOCs did not comply with MCI's wishes in their tariffs concerning telecommunications fraud prevention (p. 16), that MCI's Global Virtual Network Service fared poorly in international forums (pp. 17-18), and that RBOCs' greater attendance at meetings of Committee T-1 working groups permits them to dominate such meetings because of the requirement that decisions reached at the working groups must be reached by consensus of attendees (pp. 19-20 -- it is true that this argument is internally contradictory, but that is what Mr. Guggina alleged) are simply far fetched and irrelevant. ATIS is submitting a filing describing its internal procedures in some detail (as MCI is on the Board of Directors of ATIS, the filing is quite neutral and non-argumentative) as is Bellcore. These filings effectively dispose of MCI's position that standards bodies, industry consensus and the reasonable application of people of good will to resolution of difficult standards issues should be replaced by government force.

V. THE LATEST OFFERING BY HATFIELD ASSOCIATES DOES NOT SUPPORT THOSE WHO WOULD REIMPOSE STRUCTURAL SEPARATION

A group of parties seeking reimposition of structural separation have introduced a document prepared by Hatfield Associates (Hatfield Report or Hatfield).⁵¹ This document, following on the heels of earlier Hatfield Reports to

⁵¹ See "ONA: A Promise Not Realized -- Reprise," Hatfield Associates, Inc., dated Apr. 6, 1995 (appended to a letter from Jeffrey A. Campbell, on behalf of CompuServe, MCI and Information Technology Association of America, to W. Caton, FCC, filed Apr. 7, 1995).

much the same effect,⁵² contends that “fundamental unbundling” has not yet been achieved in the ONA world, that such unbundling is feasible and desirable, and that non-structural safeguards will not prevent cross subsidization.

To a large extent the Hatfield Report simply misses the issue in this proceeding. The key matter which this docket addresses is whether structural separation should be reimposed on the RBOCs for the offering of enhanced services. While “unbundling” is clearly an important issue, while there are serious questions over the level of unbundling which is economical, practical or reasonable, and while there may be a disagreement over whether such unbundling is better treated through customer requests under the ONA process (as is the case today) or through governmental mandate (as MCI demands), no one contends that the local exchange networks have been “fundamentally unbundled” at this time. Instead, U S WEST’s position is that it would be arbitrary, unfair and contrary to the public interest to reimpose structural separation for provision of its enhanced services. Thus, Hatfield’s main points -- that local exchange carriers still possess considerable market power (or, more accurately, market share, as there is a very real issue as to whether the LECs could sustain an actual exercise of market power) and have not “fundamentally unbundled” their networks -- are really irrelevant.

Several issues raised by Hatfield deserve brief comment.

First, quoting back to the original Computer III Order which describes the fact that ONA contemplates that LECs “must unbundle key components of its basic

⁵² See, e.g., Hatfield at 7 n.8, 11 n.15, 17 n.24.

services and offer them to the public under tariff . . .,” Hatfield concludes that ONA really means:

In other words, the basic components of the network -- the loop, switching, signaling, intelligent network services, interoffice transport -- and even appropriately-defined subcomponents of these components, such as the distribution and feeder portion of the loop -- would be available on a separate, or “unbundled,” basis. A user could buy just those components it needed to construct the services it wished to offer. Thus, for instance, an ESP could purchase just the local loop from the RBOC, and connect it to its own facilities. The basic unbundled components of the network were referred to by the Commission as Basic Service Elements (BSEs).⁵³

Of course, Hatfield’s description of a “fundamentally unbundled” network, good or bad, is a far cry from the market-based unbundling contemplated in any of the Computer III Orders. Hatfield’s vision of the future is not shared by everyone, and certainly cannot take place without serious regulatory, technological, market, economic and public interest analysis. Hatfield’s criticism that the Commission somehow abrogated the original ONA vision by “order[ing] the RBOCs to explore with the industry how further unbundling might take place [through the IILC] is simply not based on a proper recollection of the facts.”⁵⁴

Hatfield also characterizes the RBOCs’ record of responding to requests for ONA services as “dismal”,⁵⁵ notwithstanding the fact that no complaints have been filed with the Commission concerning wrongful denial of a request for a new ONA

⁵³ Id. at 10 (emphasis in omitted).

⁵⁴ Id. at 11.

⁵⁵ Id. at 12.

service. In point of fact, based on Appendix B to the ONA Users' Guide (and U S WEST's own April 15, 1995 ONA filing),⁵⁶ U S WEST has met 81 of the 118 requests for ONA services submitted to it by enhanced service providers. Thirty-one requests have not been met by any RBOC because the technical capability for the requested service does not exist.⁵⁷ These are not "dismal" statistics. If U S WEST were really refusing to make a bona fide attempt to provide service to ESPs, we assume that MCI and Hatfield would have come up with something more compelling than a meaningless and misleading statistical analysis.

Hatfield makes another mistake in an area where it should know better. Proclaiming that "RBOC Pricing Makes ONA Services Uneconomic,"⁵⁸ Hatfield proclaims that:

Compared to local business lines, BSAs are very expensive, making it impractical for ESPs to purchase BSEs. . . . In return for paying almost \$200 more per line for a BSA, the ESP may purchase BSEs not available with a business line. The cost differential is so great, however, that the vast majority of ESPs continue to purchase business lines and have foregone the use of BSEs that might give them the capability to provide new and innovative services for their subscribers.⁵⁹

⁵⁶ See April 15, 1995, Annual ONA Report of U S WEST Communications, Inc., CC Docket No. 88-2, Phase I, In the Matter of Filing and Review of Open Network Architecture Plans, filed Apr. 17, 1995.

⁵⁷ See U S WEST Communications, Inc.'s April 15, 1995 Annual ONA Report. While Hatfield contends that requests which have been classified as "requir[ing] development" (U S WEST uses the term "technically infeasible") as having been "dismissed. . . from further consideration by a wave of the hand. . ." (Hatfield, p.12), this report lists each such request for network capability and its disposition. Annual ONA Report at 7-9 and appendices C and D. If Hatfield were really interested in actual ONA implementation, rather than rhetoric, the Hatfield Report presumably would have addressed some of these services.

⁵⁸ Hatfield at 12.

⁵⁹ Id. at 12-13.

However, as Hatfield is presumably aware, a business line is an ONA service, and is every bit as much a “basic serving arrangement” as is an interstate feature group line. We are aware of no basic service elements available on an interstate feature group line which are not available in some configuration or other on a intra-state service. Interstate basic service elements are not purchased in abundance because the enhanced service provider exemption from payment of interstate switched access rates enables enhanced service providers to obtain interstate access at a price which is considerably lower than switched access rates by configuring themselves as end users and avoiding these charges. Hatfield’s allegation that ONA does not work because of the high cost of feature group service is mystifying.

Hatfield also seems to miscomprehend the actuality of the market when it contends that “[o]nly a limited number of [CLASS] features have been made fully available to competitors under ONA plans.”⁶⁰ U S WEST already offers under tariff the following CLASS services -- available to all ESPs: Continuous redial, Last call return, Caller identification name and number, Call trace, Priority call, Selective call forwarding and Call rejection. As new CLASS services are developed, they will be deployed in accordance with market requests. However, unless an ESP requests that a service be designated as an ONA service (or an internal U S WEST enhanced service operation wishes to utilize the function), a new local exchange service is not classified as an ONA service. But the service is still offered, and is still available to

⁶⁰ Id. at 19.

ESPs on a nondiscriminatory basis. Hatfield's analysis is simply based on a lack of ESP interest in existing U S WEST tariffed services, and nothing more.

Another strange Hatfield logic train is illustrated by its citation of a statement in an article by Ann E. Merrell, in which Ms. Merrell discussing deployment of CCS networks, and is quoted as stating:

Extensions of other services to function on an interLATA basis are technically feasible. However, in addition to the need to determine the market potential of such extensions, there are possible business, regulatory and legal issues that may need to be addressed first.⁶¹

This seems like a perfectly innocuous and responsible statement. After all, introduction of a new service by any company without first analyzing the potential business, legal and regulatory issues would most assuredly be foolhardy. But Hatfield seems to share Mr. Guggina's paranoia, when it draws the following conclusion from this innocent passage:

This shows that, first, the RBOCs may choose not to make technically feasible forms of interconnection available for strategic business reasons and, second, that they can raise a host of market, regulatory and legal issues in order to delay technically feasible interconnections for potential competitors.⁶²

There is simply no way a fair reading of the passage quoted by Hatfield can lead to Hatfield's negative conclusion.⁶³

⁶¹ Id. at 28 (citation and emphasis omitted).

⁶² Id.

⁶³ For more unfounded Hatfield speculation, see id. at 34-36.

The remainder of the Hatfield Report is generally a rambling collection of opinions about Hatfield's own vision of how it could design a network (and how RBOCs seem of a single mind to thwart that vision, pp. 26-36) and how price cap regulation still has many indicia of rate of return regulation (pp. 38-41) (failing to note, however, that MCI fought vigorously to defeat incentive regulation and to retain RBOC rate base regulation for an indefinite period).

Hatfield concludes that "[t]he costs of eliminating structural separation would likely far exceed the benefits."⁶⁴ Hatfield's "costs", however, include such items as "Risk of anticompetitive behavior" and "Cost of the antitrust suits that would follow."⁶⁵ Hatfield's other "costs" are no less general and global. The conclusions are a fitting end to an analytical report which simply fails to address any of the key issues upon which decisions in this docket must be premised.

VI. CONCLUSION

The commentators in this docket seeking to reimpose structural separation have failed to raise any intelligible reason to support their position. U S WEST accordingly requests that the Commission's decision in this docket reaffirm that

⁶⁴ Id. at 51.

⁶⁵ Id.

U S WEST's ability to provide integrated enhanced services best serves the interests of consumers and is in the public interest.

Respectfully submitted,

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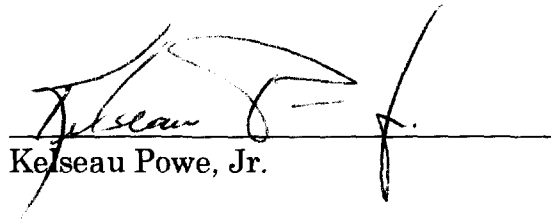
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May 19, 1995

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 19th day of May, 1995, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.**, to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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